

Article 2D.

Administration of Benefits.

§ 96-15. Claims for benefits.

(a) Generally. – Claims for benefits must be made in accordance with rules adopted by the Division. An employer must provide individuals providing services for it access to information concerning the unemployment compensation program. The Division must supply an employer with any printed statements and other materials that the Division requires an employer to provide to individuals without cost to the employer.

(a1) Attached Claims. – An employer may file claims for employees through the use of automation in the case of partial unemployment. An employer may file an attached claim for an employee only once during a benefit year, and the period of partial unemployment for which the claim is filed may not exceed six weeks. To file an attached claim, an employer must pay the Division an amount equal to the full cost of unemployment benefits payable to the employee under the attached claim at the time the attached claim is filed. The Division must credit the amounts paid to the Unemployment Insurance Fund.

An employer may file an attached claim under this subsection only if the employer has a positive credit balance in its account as determined under Article 2B of this Chapter. If an employer does not have a positive credit balance in its account, the employer must remit to the Division an amount equal to the amount necessary to bring the employer's negative credit balance to at least zero at the time the employer files the attached claim.

(b) (1) Initial Determination. – A representative designated by the Division shall promptly examine the claim and shall determine whether or not the claim is valid. If the claim is determined to be not valid for any reason other than lack of base period earnings, the claim shall be referred to an Adjudicator for a decision as to the issues presented. If the claim is determined to be valid, a monetary determination shall be issued showing the week with respect to when benefits shall commence, the weekly benefit amount payable, and the potential maximum duration thereof. The claimant shall be furnished a copy of such monetary determination showing the amount of wages paid him by each employer during his base period and the employers by whom such wages were paid, his benefit year, weekly benefit amount, and the maximum amount of benefits that may be paid to him for unemployment during the benefit year. When a claim is not valid due to lack of earnings in his base period, the determination shall so designate. The claimant shall be allowed 10 days from the earlier of mailing or delivery of his monetary determination to him within which to protest his monetary determination and upon the filing of such protest, unless said protest be satisfactorily resolved, the claim shall be referred to the Assistant Secretary or designee for a decision as to the issues presented. All base period employers, as well as the most recent employer of a claimant on a temporary layoff, shall be notified upon the filing of a claim which establishes a benefit year.

No claim for benefits may be withdrawn by a claimant except upon the filing of a notice of withdrawal within 10 days from the earlier of mailing or delivery of his monetary determination to him and a finding of good cause by the Assistant Secretary or designee.

At any time within one year from the date of the making of an initial determination, the Division on its own initiative may reconsider such determination if it finds that an error in computation or identity has occurred in connection therewith or that additional wages pertinent to the claimant's

- benefit status have become available, or if such determination of benefit status was made as a result of a nondisclosure or misrepresentation of a material fact.
- (2) Adjudication. – When a protest is made by the claimant to the initial or monetary determination, or a question or issue is raised or presented as to the eligibility of a claimant, or whether any disqualification should be imposed, or benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator may consider any matter, document or statement deemed to be pertinent to the issues, including telephone conversations, and after such consideration shall render a conclusion as to the claimant's benefit entitlements. The adjudicator shall notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator shall be deemed the final decision of the Division unless within 30 days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant to rules adopted by the Division. The Division shall be deemed an interested party for such purposes and may remove to itself or transfer to an appeals referee the proceedings involving any claim pending before an adjudicator. Provided, any interested employer shall be allowed 10 days from the mailing or delivery of the notice of the filing of a claim against the employer's account, whichever first occurs, to file with the Division its protest of the claim in order to have the claim referred to an adjudicator for a decision on the question or issue raised. Any protest filed must contain a basis for the protest and supporting statement of facts, and the protest may not be amended after the 10-day period from the mailing or delivery of the notice of filing of a claim has expired. No payment of benefits shall be made by the Division to a claimant until one of the following occurs:
- a. The employer has filed a timely protest to the claim.
 - b. The 10-day period for the filing of a protest by the employer has expired.
 - c. A determination under this subdivision has been made.

Provided further, no question or issue may be raised or presented by the Division as to the eligibility of a claimant, or whether any disqualification should be imposed, after 45 days from the first day of the first week after the question or issue occurs with respect to which week an individual filed a claim for benefits. None of the provisions of this subsection shall have the force and effect nor shall the same be construed or interested as repealing any other provisions of G.S. 96-18.

An employer shall receive written notice of the employer's appeal rights and any forms that are required to allow the employer to protest the claim. The forms shall include a section referencing the appropriate rules pertaining to appeals and the instructions on how to appeal.

- (c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals referee or hearing officer shall set a hearing in which the parties are given reasonable opportunity to be heard. The conduct of hearings shall be governed by suitable rules adopted by the Division. The rules need not conform to common law or statutory rules of evidence or technical or formal rules of procedure but shall provide for the conduct of hearings in such manner as to ascertain the substantial rights of the parties. The hearings may be conducted by conference telephone call or other similar means provided that if any party files with the Division prior written objection to the telephone procedure, that party will be afforded an opportunity for an in-person hearing at such place in the State as the Division by rule shall provide. The hearing shall be scheduled for a time that, as much as practicable, least intrudes on and reasonably accommodates the ordinary

business activities of an employer and the return to employment of a claimant. The appeals referee or hearing officer may affirm or modify the conclusion of the adjudicator or issue a new decision in which findings of fact and conclusions of law will be set out or dismiss an appeal when the appellant fails to appear at the appeals hearing to prosecute the appeal after having been duly notified of the appeals hearing. The evidence taken at the hearings before the appeals referee shall be recorded and the decision of the appeals referee shall be deemed to be the final decision of the Division unless within 10 days after the date of notification or mailing of the decision, whichever is earlier a written appeal is filed pursuant to such rules as the Board of Review and the Division may adopt. No person may be appointed as an appeals referee or hearing officer unless he or she possesses the minimum qualifications necessary to be a staff attorney eligible for designation by the Division as a hearing officer under G.S. 96-4(q). No appeals referee or hearing officer in full-time permanent status may engage in the private practice of law as defined in G.S. 84-2.1 while serving in office as appeals referee or hearing officer; violation of this prohibition shall be grounds for removal. Whenever an appeal is taken from a decision of the appeals referee or hearing officer; the appealing party shall submit a clear written statement containing the grounds for the appeal within the time allowed by law for taking the appeal, and if such timely statement is not submitted, the Board of Review may dismiss the appeal.

(c1) Unless required for disposition of an ex parte matter authorized by law, the Division, appeals referee, or employee assigned to make a decision or to make findings of facts and conclusions of law in a case shall not communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for parties to participate.

(c2) Whenever a party is notified of the Board of Review's or a hearing officer's decision by mail, G.S. 1A-1, Rule 6(e) shall apply, and three days shall be added to the prescribed period to file a written appeal.

(d) Repealed by Session Laws 1977, c. 727, s. 54.

(d1) No continuance shall be granted except upon application to the Division, the appeals referee, or other authority assigned to make the decision in the matter to be continued. A continuance may be granted only upon such terms and conditions as the Division by rule shall provide. Acceptable grounds for granting a continuance shall include, but not be limited to, those instances when a party to the proceeding, a witness, or counsel of record has an obligation of service to the State, such as service as a member of the North Carolina General Assembly, or an obligation to participate in a proceeding in a court of greater jurisdiction.

(e) Review by the Board of Review. – The Board of Review may on its own motion affirm, modify, or set aside any decision of an appeals referee, hearing officer, or other employee assigned to make a decision on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it, or may provide for group hearings in such cases as the Board of Review finds appropriate. The Board of Review may remove itself or transfer to an appeals referee, hearing officer, or other employee assigned to make a decision the proceedings on any claim pending before an appeals referee, hearing officer, or other employee assigned to make a decision. Interested parties shall be promptly notified of the findings and decision of the Board of Review.

(f) Procedure. – The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules adopted by the Division for determining the rights of the parties, whether or not such regulations conform to common-law or statutory rules of evidence and other technical rules of procedure.

All testimony at any hearing before an appeals referee upon a disputed claim shall be recorded unless the recording is waived by all interested parties. If the testimony is recorded, it need not

be transcribed unless the disputed claim is further appealed and, one or more of the parties objects, under such rules as the Division may adopt, to being provided a copy of the tape recording of the hearing. Any other provisions of this Chapter notwithstanding, any individual receiving the transcript shall pay to the Division such reasonable fee for the transcript as the Division may by regulation provide. The fee so prescribed by the Division for a party shall not exceed the lesser of sixty-five cents (65) per page or sixty-five dollars (\$65.00) per transcript. The Division may by regulation provide for the fee to be waived in such circumstances as it in its sole discretion deems appropriate but in the case of an appeal in forma pauperis supported by such proofs as are required in G.S. 1-110, the Division shall waive the fee.

The parties may enter into a stipulation of the facts. If the appeals referee, hearing officer, or other employee assigned to make the decision believes the stipulation provides sufficient information to make a decision, then the appeals referee, hearing officer, or other employee assigned to make the decision may accept the stipulation and render a decision based on the stipulation. If the appeals referee, hearing officer, or other employee assigned to make the decision does not believe the stipulation provides sufficient information to make a decision, then the appeals referee, hearing officer, or other employee assigned to make the decision must reject the stipulation. The decision to accept or reject a stipulation must occur in a recorded hearing.

(g) **Witness Fees.** – Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the Division. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expense of administering this Chapter.

(h) **Judicial Review.** – A decision of the Board of Review becomes final 30 days after the date of mailing unless a party to the decision seeks judicial review as provided in this subsection. Judicial review is permitted only after a party claiming to be aggrieved by the decision has exhausted the remedies provided in this Chapter and has filed a petition for review in the superior court of the county in which the petitioner resides or the county in which the petitioner's principal place of business is located. The petition for review must explicitly state what exceptions are taken to the decision or procedure and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the petitioner must serve copies of the petition by personal service or by certified mail, return receipt requested, upon the Division and upon all parties of record to the Division proceedings. The Division must furnish the petitioner the names and addresses of the parties upon request. The Division is a party to any judicial action involving any of its decisions and may be represented in the judicial action by any qualified attorney who has been designated by it for that purpose. Any questions regarding the requirements of this subsection concerning the service or filing of a petition shall be determined by the superior court. Any party to the Division proceeding may become a party to the review proceeding by notifying the court within 10 days after receipt of the copy of the petition. Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.

Within 45 days after receipt of the copy of the petition for review or within such additional time as the court may allow, the Division must transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. With the permission of the court the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost incurred by the refusal. The court may require or permit subsequent corrections or additions to the record when the court considers the changes desirable.

(i) **Review Proceedings.** – If a timely petition for review has been filed and served as provided in G.S. 96-15(h), the court may make party defendant any other party it deems necessary or proper to a just and fair determination of the case. The Division may, in its discretion, certify to the reviewing court questions of law involved in any decision by it. In any judicial proceeding under this section, the findings of fact by the Division, if there is any competent evidence to support them and in the absence of fraud, shall be conclusive, and the

jurisdiction of the court shall be confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner and shall be given precedence over all civil cases. An appeal may be taken from the judgment of the superior court, as provided in civil cases. The Division shall have the right to appeal to the appellate division from a decision or judgment of the superior court and for such purpose shall be deemed to be an aggrieved party. No bond shall be required of the Division upon appeal. Upon the final determination of the case or proceeding, the Division shall enter an order in accordance with the determination. When an appeal has been entered to any judgment, order, or decision of the court below, no benefits shall be paid pending a final determination of the cause, except in those cases in which the final decision of the Division allowed benefits.

(j) Repealed by Session Laws 1985, c. 197, s. 9.

(k) Irrespective of any other provision of this Chapter, the Division may adopt minimum regulations necessary to provide for the payment of benefits to individuals promptly when due as required by section 303(a)(1) of the Social Security Act as amended (42 U.S.C.A., section 503(a)(1)). (Ex. Sess. 1936, c. 1, s. 6; 1937, c. 150; c. 448, s. 4; 1941, c. 108, s. 5; 1943, c. 377, ss. 9, 10; 1945, c. 522, ss. 30-32; 1947, c. 326, s. 23; 1951, c. 332, s. 15; 1953, c. 401, s. 19; 1959, c. 362, ss. 16, 17; 1961, c. 454, s. 21; 1965, c. 795, ss. 20-22; 1969, c. 575, ss. 13, 14; 1971, c. 673, ss. 30, 30.1; 1977, c. 727, s. 54; 1981, c. 160, ss. 27-32; 1983, c. 625, ss. 10-14; 1985, c. 197, s. 9; c. 552, ss. 18-20; 1987 (Reg. Sess., 1988), c. 999, s. 6; 1989, c. 583, ss. 11, 12; c. 707, s. 4; 1991, c. 723, ss. 1, 2; 1993, c. 343, ss. 4, 5; 1999-340, ss. 6, 7; 2004-124, s. 13.7B(c); 2005-122, s. 1; 2006-242, s. 1; 2011-401, s. 2.16; 2012-134, s. 2(c), (d); 2013-2, s. 7(b); 2013-224, ss. 16, 17, 19; 2015-238, ss. 2.3(a), 2.9; 2017-8, s. 3.2(a); 2017-203, s. 6; 2018-94, ss. 2, 5(a).)